electric system . . . . would not amount to an additional servitude, but only to an improvement upon the first system, which is allowable, and without further express grant. But in this case the plaintiff is bound only by her contract, and any change in the location of the track which is essentially different from that in view of which they contracted, and which works an injury to her property or business, creates a liability in her favor and against the company."

INSURANCE—CONDITION FOR NOTICE BY INSURED—EFFECT OF INCAPACITY OF INSURED.—An accident insurance policy contained the condition that the insured should give written notice of the accident to the insurer within ten days after its occurrence, together with a full statement of the nature of the injury, otherwise all indemnity or benefits under the policy should be forfeited. The plaintiff was injured by a fall from a bicycle which rendered him unconscious and incapacitated to give the notice within the required time. Within a reasonable time after his ability was restored, he gave the notice. *Held*, that the plaintiff could recover on the policy. *Comstock* v. *Fraternal Accident Asso'n of America* (1903), — Wis. —, 93 N. W. Rep. 22.

The court reasoned as follows: The general rule is, that parties to an express contract must perform according to their agreement or take the consequences implied by law or agreed upon; citing *Cook* v. *McCabe*, 53 Wis. 250, 10 N. W. 507, 40 Am. Rep. 765; *Bacon* v. *Cobb*, 45 Ill. 47; *Dewey* v. *School Dist.*, 43 Mich. 480, 5 N. W. 646, 38 Am. Rep. 206; *Superintendent* v. *Bennett*, 27 N. J. L. 513, 72 Am. Dec. 373. And generally when one by contract imposes a duty upon himself, impossibility of performance from any cause does not excuse non-performance; citing *The Harriman*, 9 Wall. 161, 19 L. ed. 629; *Beebe* v. *Johnson*, 19 Wend. 500, 32 Am. Dec. 518; *Stees* v. *Leonard*, 20 Minn. 494; *School Dist.* v. *Dauchy*, 25 Conn. 530, 68 Am. Dec. 371; *Jones* v. *U. S.*, 96 U. S. 24, 24 L. ed. 644. But this rule has exceptions. One is, where impossibility of personal performance occurs subsequently to the making of the contract, and it is clear that personal performance and none other was contemplated by the parties; citing *Dickey* v. *Linscott*, 20 Me. 453, 37 Am. Dec. 66; *Johnson* v. *Walker*, 155 Mass. 253, 29 N. E. 522, 31 Am. St. Rep. 550; 7 AM. & ENG. ENC. LAW (2nd ed.) 147. This case, said the court, may well be brought within the exception. Several cases are cited on the general subject of conditions for notice. This decision seems well supported by authority. The general rule is, that a supervening impossibility will not excuse non-performance. *Switzer* v. *Mfg. Co.*, 59 Mich. 488, 26 N. W. 762; *Anderson* v. *May*, 50 Minn. 280, 17 L. R. A. 555, 52 N. W. 530. But the intention of the parties is the real test. *Potter* v. *Berthelet*, 20 Fed. 240; *Wolfe* v. *Howes*, 20 N. Y. 197, 75 Am. Dec. 388; *Stewart* v. *Stone*, 127 N. Y. 500, 14 L. R. A. 215 (and note). If it is clear that the parties contemplated the continued existence of a thing or person, the perishing of such person or thing will excuse non-performance. Within this exception are contracts for personal services. *Pinkham* v. *Libby*, 93 Me. 575, 49 L. R. A. 693, 45 Atl. 823; *Lorillard* v. *Clyde*, 142 N. Y. 456, 24 L. R. A. 113, 37 N. E. 489; *Walker* v. *Tucker*, 70 Ill. 527; *C. M. & St. P. Ry. Co.* v. *Hoyt*, 149 U. S. 1, 13 Sup. Ct. 779, 37 L. ed. 625.

INSURANCE—CONDITIONS PRECEDENT TO DOING BUSINESS IN ANOTHER STATE—SUBSTITUTED SERVICE.—The statute of Pennsylvania provided, that no foreign insurance company should do any business in the state until it had filed a written stipulation, agreeing that legal process should be served upon the insurance commissioner, or upon some agent specified by the company. The defendant insurance company, a corporation of Indiana, issued a policy to

one Doyle, a resident of Pennsylvania, without filing the required stipulation. Upon the death of Doyle, the plaintiff sued on the policy, serving process on the deputy insurance commissioner. *Held*, that plaintiff could not recover. *Old Wayne Mut. Life Ass'n.* v. *Flynn* (1903), — Ind. App. —, 66 N. E. Rep. 57.

An insurance company, said the court, can not evade the provisions of the statute by failing to file the required stipulation. But to give the court jurisdiction, there must be service of process. And where a special mode of service is provided by statute, such mode must be followed; citing 19 ENC. PL. AND PR. 673; *Rehm* v. *Ger. Ins. Co.*, 125 Ind. 135, 25 N. E. 173; *Guernsey* v. *Ins. Co.*, 13 Minn. 278; *Reddington* v. *Land Co.*, 19 Hun, 405; *Express Co.* v. *Conant*, 45 Mich. 642, 8 N. W. 574; *Desper* v. *Water Meter Co.*. 137 Mass. 252. And where the statute requires service on an officer, service on his deputy is not sufficient to give the court jurisdiction; citing *Lonkey* v. *Mining Co.*, 21 Nev. 312, 31 Pac. 57, 17 L. R. A. 351; *City of Watertown* v. *Robinson*, 69 Wis. 230, 34 N. W. 140; *Amy* v. *City of Watertown*, 130 U. S. 317, 9 Sup. Ct. 536, 32 L. ed. 946; *Tallman* v. *Railroad Co.*, 45 Fed. 156; *Chambers* v. *Manufactory*, 16 Kan. 270. By the great weight of authority, a corporation cannot evade liability on its contracts by setting up its own failure to comply with the statutory requirements. *Phœnix Ins. Co.* v. *Pa. Co.*, 134 Ind. 215, 20 L. R. A. 405 (note), 33 N. E. 970; *Foster* v. *Lumber Co.*, 5 S. D. 57, 23 L. R. A. 490 (note); *Swan* v. *Ins. Co.*, 96 Pa. St. 37; *Watertown F. Ins. Co.* v. *Rust*, 141 Ill. 85, 30 N. E. —; *Pennypacker* v. *Ins. Co.*, 80 Ia. 56, 8 L. R. A. 236, 45 N. W. 408. On this general subject see note to *Edison Gen. Elec. Co.* v. *Navigation Co.*, 24 L. R. A. 315. But the corporation must be served with process. *St. Clair* v. *Cox*, 106 U. S. 350, 27 L. ed. 222; *Golden* v. *Morning News*, 156 U. S. 518. And it has been held that jurisdiction cannot be acquired where it appears from the plaintiff's own pleading that defendant was only served by substituted service, and defendant has not appeared to plead to the jurisdiction, and it is not shown that he has had notice, actual or constructive. *Lubrano* v. *Imperial Council*, 20 R. I. 27, 38 L. R. A. 546, 37 Atl. 345; *Rothrock* v. *Ins. Co.* 23 L. R. A. 863, 161 Mass. 423, 37 N. E. 206. Cases on the precise point involved in the principal case are scarce, and seem to support the doctrine there laid down, though it has been held that where an officer designated a clerk to receive service for him, and afterward made a written admission of service, the court obtained jurisdiction. *The South Pub. Co.* v. *Fire Asso'n* 67 Hun, 41. As a general rule, the authority of a deputy, unless otherwise limited, is commensurate with that of the officer himself. MECHEM ON PUBLIC OFFICERS, § 570. But a statutory mode of service upon a foreign corporation is exclusive and must be followed. 6 THOMPSON ON CORPORATIONS, § 7503; *Great West Mining Co.* v. *Min. Co.*, 12 Colo. 46, 13 Am. St. Rep. 204; *Southern Express Co.* v. *Craft*, 43 Miss. 508. Furthermore, a statute authorizing substitute service must be strictly followed. *Merrill* v. *Montgomery*, 25 Mich. 73; *Hoen* v. *R. Co.*, 64 Mo. 561; *St. L. etc. Ry. Co.* v. *Dorsey*, 47 Ill. 288. On these principles the case seems rightly decided.

INSURANCE—POLICY INSURING AGAINST LOSS FROM LIABILITY FOR INJURIES DOES NOT INSURE AGAINST LOSS FOR DEATH.—The defendant Insurance Company insured the plaintiff railway against loss from liability to every traveler who might "accidentally sustain bodily injuries under circumstances which shall impose upon the insured a common law or statutory liability for such injuries." A traveler on plaintiff's road died instantly and without conscious suffering in an accident for which plaintiff was responsible. *Held*, that plaintiff could not recover on the policy. *Worcester and Suburban*